

# Nebraska Judicial News

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## Nebraskans Care: Changes in Guardianship and Conservatorship Laws and Rules 2012

The Nebraska Judiciary, which has a constitutional mandate to provide access to justice for all of Nebraska's citizens, recognizes the special needs of the elderly and the vulnerable. In 2010, Nebraska had 247,000 residents who were over the age of 65. By 2030, that number is projected to grow to 404,000. While the total population of the state is expected to grow 11.1 percent by 2030, the percentage of those between the ages of 70 and 79 is expected to grow more than 80 percent. It is anticipated that the need for guardianships and conservatorships, in which individuals are appointed by a court to make personal health care and/or financial decisions for another, will increase as the population ages. This creates an ever greater need for vigilance on the part of Nebraska's families, law enforcement and other public and private entities.



*Photo: (l to r) Judge Todd Hutton, Sherri Dennis, Administrative Office of the Courts, and Judge Susan Bazis review JUSTICE computer program adaptations for new guardian/conservator forms during a fall training conference for court clerks.*

### Courts, Legislature, Community Collaboration

In June 2010, Chief Justice Michael Heavican, in cooperation with the Legislature, initiated the process to review state laws related to the aging population. The **Joint Review Committee on the Status of Adult Guardianships and Conservatorships in the Nebraska Court System** was established and charged with reviewing Nebraska's process and recommending any changes needed in the statutes or court rules. Furthermore, the committee sought to ensure that any recommended changes should exhaust all current systemic opportunities for change without requiring a budget increase. The committee issued its final recommendations on October 1, 2010. They were substantially incorporated into legislation through LB 157, which was introduced by Sen. Colby Coash of Lincoln, Nebraska.



### **LB 157: Working to Bridge the Gaps**

LB 157 is a comprehensive legislative effort to bridge the gaps in checks and balances that left the courts at a disadvantage in knowing who would be best qualified to serve the needs of a vulnerable person. Sen. Coash stated that because many Nebraskans require support in the form of a guardianship or conservatorship, he felt it incumbent to introduce legislation to provide additional safeguards. "We have an amazing network of dedicated citizens who step up when asked to provide this service [as guardians and conservators]. It is my hope that LB 157 provides them and the courts with additional tools to provide this invaluable service. It was a pleasure working with so many dedicated stakeholders throughout this process." At the time the committee was formed there were more than 12,000 Nebraskans being served by guardians and conservators.



### **Increased Information to the Courts**

The Joint Review Committee determined that current laws provided inadequate information for courts to effectively review cases. In the rare occasion when a guardian or conservator failed to act consistently with the best interests of the ward, the courts themselves often had incomplete information upon which to act.

While many families, volunteers, and professional caregivers are fully committed to meeting the needs of our aging population, when an adult becomes vulnerable, there were systemic changes identified which would serve to deter exploitation of that person's financial and health care needs. The Legislature recognized that the courts cannot and should not act on their own, but rather should maintain the role of providing a venue where conflicts are brought for resolution. It was not lost on the committee that any changes in the law had to protect the discretion of the courts in crafting orders that were designed to meet the best interests of each individual. One size does not fit all. The decisions of the courts remain dependent on the quality of information they are provided by the parties.

Under the previous law there was no requirement for nominated guardians and conservators to submit to

*Senator John Wightman (above) and Chief Justice Mike Heavican (below) preside over a fully attended initial meeting of the Review Committee on the Status of Adult Guardianships and Conservatorships in Nebraska Court System on June 11, 2010. Also pictured with the Chief Justice is Nebraska Clerk Magistrate Kathy Jones.*

background checks. The courts were left to rely on self reporting or objections raised by interested parties in challenging qualifications of the nominee in light of their criminal or financial history. It was determined that a process was needed to make this information available to the courts. The Joint Review Committee recommended and LB 157 as well as court rule provides that criminal, financial record, and sex offender checks of nominees must be submitted before a guardian or conservator is appointed unless the requirement is waived by the court. These background checks will be provided to the court and made available to interested parties.

### Enhancing the Role of Those Interested in the Ward

The Joint Review Committee further explored the quantity and quality of evidence provided to the courts, including the initial nomination of a guardian or conservator and the thoroughness of annual reports. The committee made it a priority to enhance the role of 'interested parties' to provide more effective checks and balances. If the interested person questions the accuracy of the representations made by the guardian or conservator, he or she may file an objection with the court.

### Collection of Financial Information

Thanks to the assistance of representatives of the Nebraska Bankers Association, the collection of financial information prior to the issuance of letters of appointment has evolved. The process of identifying the actual assets that will be managed by a conservator has consistently proved challenging. Therefore, unless the assets are valued at less than \$10,000 or the requirement is waived by the court, conservators will be required to post a bond.

### Guardian and Conservator Database

The State Court Administrator is creating a central database of guardians and conservators. Once implemented, this web-based resource will provide the public with a tool to access if questions arise regarding the authority the guardian and conservator has in acting on behalf of the ward. Anyone interested will be able to independently verify whether the person acting on behalf of a ward remains in good standing.

The Hon. Susan M. Bazis, Douglas County Court, recipient of the Chief Justice's Award for Distinguished Service to the Community for her work on the Review Committee, stated: "The most significant changes in the law and rules are that the court will have more information about the person who seeks appointment as a guardian or conservator and about the ward's assets before the nominated guardian or conservator has access to the ward's financial assets, and interested parties



*Stacey Conroy, Legal Counsel to the Judiciary Committee, assists with organizational meeting of Review Committee with meeting facilitator, Debora Brownyard (center) and Judge Todd Hutton.*



will receive copies of documents filed with the court.” This will in turn facilitate greater checks and balances of the actions taken by guardians and conservators in meeting the needs of their wards.

## **Guardian, Court and Community Education**

Current guardians and conservators will receive information to explain the changes in their responsibilities under the new law. The Nebraska Judicial Branch’s website has a page devoted to guardianships and conservatorships in Nebraska, which includes informational guides, a video, links to the statutes, rules, and required reporting forms, and additional references. It was recognized early on that Judicial Branch Education (JBE) would play a key role in implementing any changes that were adopted. JBE was successful in securing a grant from the State Justice Institute to facilitate training of court staff and judges. In developing an education plan, it was decided to utilize the latest in distance learning technology as a complement to traditional seminars. JBE has also been a valuable resource in creating training modules for financial institutions as well as guardians and conservators, according to Carol McMahon-Boies, Director of Judicial Branch Education.

Nebraskans care about the well-being of our elderly population and those most vulnerable to exploitation and abuse. They recognize the important considerations that must be made to define the appropriate moment of intervention without sacrificing privacy, care and dignity of our fellow citizens. They understand that aging is our common destiny and warrants our continued attention.

The Legislature and the Judiciary have worked together to enhance current procedures to address the needs of this growing population in our communities. While the changes in both law and rule give promise to deter exploitation, abuse, and mishandling of wards’ funds, it remains a Nebraska priority that each citizen takes a renewed interest in providing a safe and healthy environment for those of us in need of assistance.



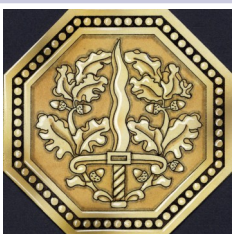
*(l to r) Judicial Branch Education Director Carol McMahon-Boies supervises staff educational webinar with Trial Court Services Director Sheryl Connolly and JUSTICE Business Analyst Supervisor Sherri Dennis.*



*(l to r) Judges Curtis Evans, Susan Bazis, and Todd Hutton, original members of the Taskforce on the Status of Adult Guardianships and Conservatorships in Nebraska Court System.*

*More detailed information is available through the Office of the State Court Administrator, 1213 State Capitol, 402.471.3730.*

*Use your smartphone to link directly to the Nebraska Guardian Conservator Webpage.*



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